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Filing date: **07/29/2009**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91180742
Party	Defendant Krush Global Limited
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Submission	Defendant's Notice of Reliance
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Date	07/29/2009
Attachments	NR.pdf (41 pages)(1123233 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

-----X	:	
DR PEPPER/SEVEN UP, INC.	:	
	:	
Opposer/Petitioner,	:	
	:	
v.	:	Consolidated Proceedings
	:	Opposition No. 91180742
	:	Cancellation No. 92048446
KRUSH GLOBAL LIMITED,	:	
	:	
Applicant/Registrant	:	
-----X	:	

**APPLICANT/REGISTRANT'S NOTICE OF RELIANCE ON
PRINTED PUBLICATIONS AND OFFICE RECORDS**

Pursuant to the Trademark Rules of Practice, Applicant/Registrant Krush Global Limited ("Applicant") hereby makes of record and notifies Opposer/Petitioner ("Opposer") of its reliance on the following:

1. **Applicant's Exhibit DX003 and DX004** are articles downloaded from the Internet on December 8, 2008. The website address where the articles were downloaded and the date of download appear at the bottom of each articles.
2. **Applicant's Exhibit DX005** are portions of a pdf document downloaded from Opposer's website [drpeppersnapplegroup.com] in December, 2008.
3. **Applicant's Exhibit DX006** is a page from Opposer's website [drpeppersnapplegroup.com] downloaded from the Internet on December 9, 2008.

4. **Applicant's Exhibit DX007** are pages downloaded from Opposer's website [drpeppersnapplegroup.com] on December 9, 2008.
5. **Applicant's Exhibit DX008** are portions of a pdf document downloaded from Opposer's website [drpeppersnapplegroup.com] in December 2008.
6. **Applicant's Exhibit DX009** is a page downloaded from Opposer's website [drpeppersnapplegroup.com] in December, 2008.
7. **Applicant's Exhibit DX010** is a page downloaded from Opposer's website [drpeppersnapplegroup.com] on December 9, 2008.
8. **Applicant's Exhibit DX011** are true and correct copies of sample images downloaded from the Internet in December 2008.
9. **Applicant's Exhibit DX012** is the home page for the website CRUSH29.COM, downloaded from the Internet.
10. **Applicant's Exhibit DX013** is a copy of the U.S. Registration No. 3,269,628 for CRUSH 29. The copy of the registration was downloaded from the USPTO.gov website.
11. All documents produced by Applicant in this proceeding, true and correct copies of which were attached to Opposer/Petitioner's Notice of Reliance on Applicant/Registrant's Discovery Responses as **Opposer's Exhibit PX 201**.
12. All documents produced by Opposer/Petitioner in this proceeding number DPSU 000001 through DPSU 002324. The parties have agreed that all produced documents and things are made of record for the proceedings so that the parties can avoid the authentication procedure set forth in

Trademark Board Manual of procedure Section 704.11(1). A copy of the letter confirming this agreement is attached to Opposer/Petitioner's Notice of Reliance on Applicant/Registrant's Discovery Responses as **Opposer's Exhibit PX 205**.

Dated: July 29, 2009

Epstein Drangel Bazerman & James, LLP

By: _____

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60 East 42nd Street, Suite 820
New York, New York 10165
Tel. No.: (212) 292-5390
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Attorneys for Applicant/Registrant

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the Notice of Reliance was served by e-mail, on this 29th day of July, 2009, upon Opposer/Petitioner counsel at:

Laura Popp-Rosenberg
Barbara A. Solomon
FROSS ZELNICK LEHRMAN & ZISSU, P.C.
866 United Nations Plaza
New York, New York 10017

New York, New York

By: /s/ Jason M. Drangel
Jason M. Drangel

EXHIBIT DX003



FACTOID # 77: At least 9 out of 10 Nigerians attend church regularly. Only 4 out of 10 Americans claim to do so.

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Encyclopedia > Orange soda

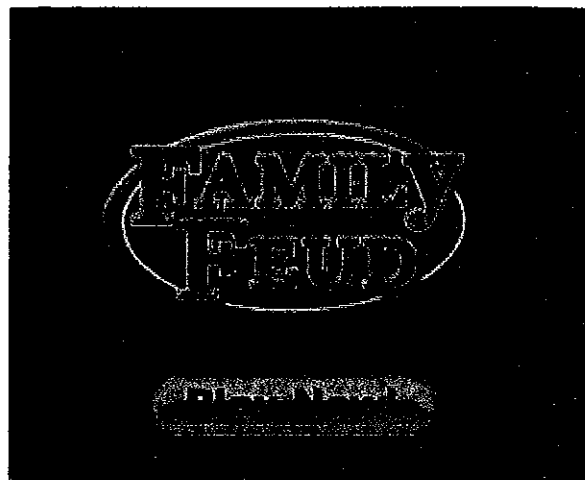
The term **orange drink** (not to be confused with **orange soft drinks**; see below) refers to a sweet, sugary drink named for its orange color. Typically such beverages contain little to no orange juice and are not much more than water, sugar, flavor, coloring, and additives, sometimes in that order. As such, they are very low in nutritional value. Because orange drinks can be confused with orange juice, the U.S. government requires orange drinks, as well as other beverages whose names allude to fruit products, to state the percentage of juice contained above the "Nutrition Facts" label.

Popular orange drinks include Sunny Delight, Tang, and orange squash. Orange Julius is a mixture of orange drink, a dairy product, and raw egg (the recipe is "secret"), sold at Orange Julius stands in malls and similar venues. There is also a product named Orange Drink and marketed by the Dairy Maid company on the Caribbean island of Nassau.

Orange soft drinks

Orange soft drinks (called **orangeade** in UK and **orange pop** or **orange soda** in certain regions of the US) are carbonated orange drinks. One which does include real orange juice (11%) and orange pulp is Orangina.

Orange soft drinks (especially those without orange juice) often contain very high levels of sodium benzoate, and this often imparts a slight metallic taste to the beverage. Other additives commonly found in orange soft drinks



www.worldwinner.com/

Ads by Google

Drop 43lbs in 10 Weeks!

I did! With no dieting or exercise!
Read my story and see how.



CBS NEWS
SmartDietInfo.com

WSI
ABC

abc

CNN

Ads by Google

include rosin and sodium hexametaphosphate.

List of orange soft drinks

- Fanta
- Mirinda Orange
- Nehi
- Orange Crush
- Orangina
- Slice
- Sunkist
- Tango

See also

- Bill Hicks - had a comedy routine about an advertisement for an orange drink.

Categories: Beverages

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EXHIBIT DX004

Orange soft drink

From Wikipedia, the free encyclopedia
(Redirected from Orangeade)

Orange soft drinks (called **orangeade** in UK, **orange soft drink** in Australia and **orange soda** or **orange pop** in certain regions of the US) are carbonated orange drinks. One which does include real orange juice (11%) and orange pulp is Orangina.

(Note that the phrase 'orange soft drink' in the UK is associated mostly with still 'orange squash' and that the carbonated drink is always 'orangeade' or colloquially 'fizzy orange'.)

Orange soft drinks (especially those without orange juice) often contain very high levels of sodium benzoate, and this often imparts a slight metallic taste to the beverage. Other additives commonly found in orange soft drinks include rosin and sodium hexametaphosphate.

Orangeade first appeared as a variety of carbonated drink provided in soda fountains in American drugstores in the late nineteenth century, brands including Miner's and Lash's. A recipe for home made Orangeade appears in editions of Fannie Farmer's cookbook.

Contents

- 1 List of orange soft drinks
- 2 In Popular Culture
- 3 See also
- 4 External links

List of orange soft drinks

- Aranciata from San Pellegrino
- Celeste soda orange soda
- Cplus orange soda (Canada)
- Dr. Brown's orange soda
- Fanta
- Faygo
- Jarritos, Barrilitos and other Mexican soft drink brands make orange or mandarina flavored soda.
- Lorina
- Mirinda Orange
- Minute Maid Valencia Orange orange soda (bottled by Coca-Cola)
- Nehi
- Orange Crush
- Orange Dream (made by Sprecher Brewery)
- Orangette
- Mountain Dew LiveWire (made by Pepsi)
- Naranjada (made by Postobon in Colombia)
- Orangina
- Schin Laranja (Orange soda bottled by Schincariol in Brazil)

- Slice
- Stewart's Orange'n Cream
- Sunkist
- Tango
- Tropicana orange soda (bottled by PepsiCo)
- Yedigün

In Popular Culture

The Kel character in the Nickelodeon TV show, Kenan and Kel, was addicted to the drink and had it in nearly every episode. In one attempt, Kel tried unsuccessfully to avoid drinking the beverage for a week.

See also

- Orange drink
- Orange juice
- Orange (fruit)
- Kenan & Kel

External links

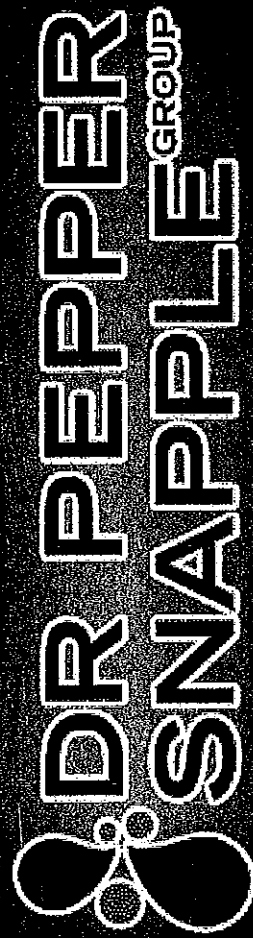
- Miner's Orangeade 5c dispenser
- Traditional drugstore orangeade was still available in 1996 from one pharmacy in North Carolina.

Retrieved from "http://en.wikipedia.org/wiki/Orange_soft_drink"

Categories: [Non-alcoholic beverages](#) | [Orange sodas](#)

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EXHIBIT DX005

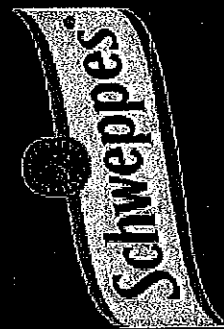
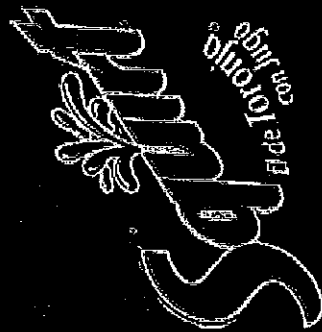
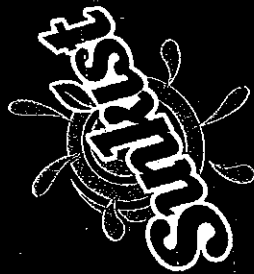
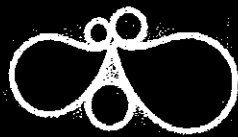


Investor Meeting

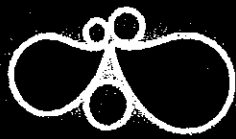
New York

May 1, 2008

Portfolio of Powerful Brands



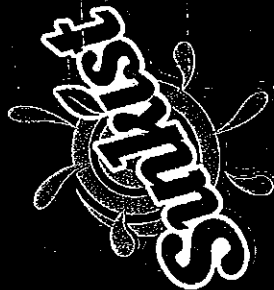
Ranked #1 or #2 In Their Categories



#1



#1



#1



#1



#1



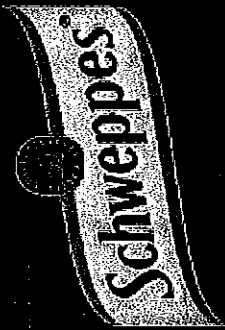
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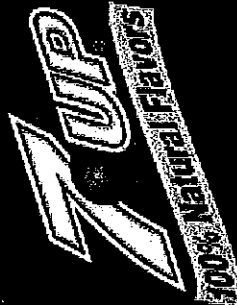
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#1



#2



#2

#1 Flavored Company in the US



Rank Non-Cola Brands 2007 \$ share

6 of Top 10
Flavored
CSDs

#1 Flavored
CSD
Company

1 Mountain Dew 22.7

2  16.5

3 Sprite 10.3

4  4.6

5  3.6

6 Sierra Mist 3.2

7  3.0

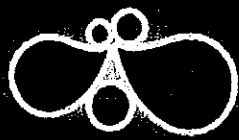
8  2.0

9 Fanta 1.5

10  1.3

Source: Nielsen

With Strong Brand Equities



Brand Equity Scores Vs Ipsos Norm

CSDs

NCBs

195 201

177

162 160

136

109

97

72



Sauce Juice

Source: IPSOS Tracker 2007

EXHIBIT DX006

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Sunkist

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THE ORIGATION OF AN ORANGE NATION

The Sunkist Growers Association has marketed the Sunkist trademark for more than 95 years. It is one of the best-known trademarks in the world.

General Cinema Corporation, a large theater operator and soft drink bottler, first licensed the use of the Sunkist trademark in a soft drink. The new Sunkist orange soda went into test markets in 1978. The product was so well received by consumers that it was launched nationally in 1979. Soon, Sunkist became the best-selling orange soft drink and sales continued to climb. By 1981, Sunkist was one of the top 10 soft drinks, a first for any orange soda.

The mid-1980s marked many changes for the brand. The Sunkist soda license experienced two ownership and product formulation changes.

In 1986, Cadbury Schweppes acquired the Sunkist orange soda license from Del Monte. Under Cadbury, the Sunkist brand expanded to include diet orange, lemonade, diet lemonade, strawberry, grape, pineapple, peach and fruit punch. In addition to the new flavors, Cadbury set to work optimizing both the Sunkist advertising and the appeal of the packaging. This culminated in new Sunkist packaging graphics launched in 1998.

Sunkist maintains a high level of brand awareness with consumers and is often named as consumers' favorite orange soda. The Sunkist soda license continues as part of Plano, Texas-based Dr Pepper Snapple Group, Inc., an integrated refreshment beverage business marketing more than 50 beverage brands throughout North America.

What's in a name?

A copywriter from the Lord & Thomas agency coined the name "Sunkissed" for an advertising campaign promoting the Southern California Fruit Exchange. Shortly afterwards, the spelling was changed to "Sunkist" and adopted as the exchange's trademark in 1908.

For more on Sunkist check out:
SunkistSoda.com

Sunkist Pineapple 20 fl oz Bottle

Nutrition Facts	
Serv. Size: 8 fl oz (240 mL)	
Servings: 2.5	
Amount Per Serving	
Calories 120	
% Daily Value*	
Total Fat 0g	0%
Sodium 40mg	2%
Total Carb. 33g	11%
Sugars 33g	
Protein 0g	
*Percent Daily Values are based on a 2,000 calorie diet.	

CARBONATED WATER, HIGH FRUCTOSE CORN SYRUP, CITRIC ACID, NATURAL AND ARTIFICIAL FLAVORS, SODIUM BENZOATE (PRESERVATIVE), ACACIA GUM, GLYCEROL ESTER OF WOOD ROSIN, BROMINATED SOYBEAN OIL, YELLOW 5, YELLOW 6.

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Press Kit

Brand Fact Sheet

OVERVIEW:

With a brand heritage spanning more than 200 years, Dr Pepper Snapple Group's portfolio includes more than 50 brands and hundreds of flavors of carbonated soft drinks, juices, teas, mixers, waters and other premium beverages.

DPS is the market leader in the flavored carbonated soft drinks (CSD) category, a key player in the fast growing ready-to-drink tea and juice drink markets and boasts the leading portfolio of shelf-stable mixers in the industry.

More than 75 percent of the company's volume is from brands that are either #1 or #2 in their flavor categories.

KEY BRANDS:

Dr Pepper

Oldest major soft drink in the United States, introduced in 1885 in Waco, Texas

Distinguished by its unique blend of 23 flavors and loyal consumer following

#1 in its flavor category and #2 overall flavored CSD in the U.S.

Flavors include regular, diet, caffeine free and "Soda Fountain Classics" line extensions

Snapple

A leading ready-to-drink tea in the U.S.

Includes premium Snapple teas and super premium white, green, red and black teas

Brand also includes premium and super premium juices, juice drinks and recently launched Antioxidant waters

Founded in Brooklyn, New York, in 1972

7UP

#2 lemon-lime CSD in the U.S.

Re-launched in 2006 as the only major lemon-lime CSD with all-natural flavors and no artificial preservatives

Flavors include regular, diet and cherry

The original "Un-Cola," created in 1929

Mott's

#1 apple juice and #1 apple sauce brand in the United States

Juice products include apple and other fruit juices, Mott's Plus and Mott's for Tots

Apple sauce products include regular, unsweetened, flavored and organic

Brand began as a line of apple cider and vinegar offerings in 1842

Sunkist Soda

#1 orange CSD in the U.S.

Flavors include orange, diet and other fruits

Licensed to DPS as a soft drink by the Sunkist Growers Association since 1988

Hawaiian Punch

#1 fruit punch brand in the U.S.

Brand includes a variety of fruit flavored and reduced-calorie juice drinks

Developed originally as an ice cream topping known as "Leo's Hawaiian Punch" in 1934

A&W

#1 root beer in the U.S.

Flavors include regular and diet root beer and cream soda

A classic all-American soda first sold at a veteran's parade in 1919

Canada Dry

#1 ginger ale in the U.S. and Canada

Brand includes club soda, tonic and other mixers

Created in Toronto in 1904 and introduced in the U.S. in 1919

Schweppes

#2 ginger ale in the U.S. and Canada

Brand includes club soda, tonic and other mixers

First carbonated beverage in the world, invented in 1783

Squirt

#1 grapefruit CSD in the U.S. and #2 grapefruit CSD in Mexico

Flavors include regular, diet and ruby red

Clamato

A leading spicy tomato juice brand in the U.S., Canada and Mexico

Key ingredient in Canada's popular cocktail, the Bloody Caesar

Created in 1969

Peñafiel

#1 carbonated mineral water brand in Mexico

Brand includes Flavors, Twist and Natural

Mexico's oldest mineral water, founded in 1928

Mr & Mrs T, Rose's & Margaritaville

#1 portfolio of mixer brands in the U.S.

Top mixer brand (Mr & Mrs T) in the U.S.

Margaritaville and Rose's lead their respective flavor categories

OTHER NOTABLE BRANDS:

EXHIBIT DX008

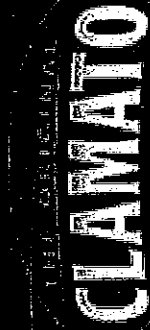
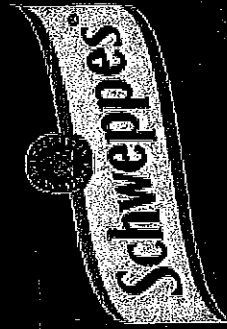


Lehman Brothers Back to School Consumer Conference

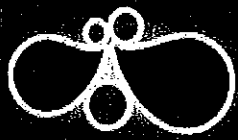
Boston

September 3, 2008

Portfolio of Powerful Brands



Ranked #1 or #2 In Their Categories



#1



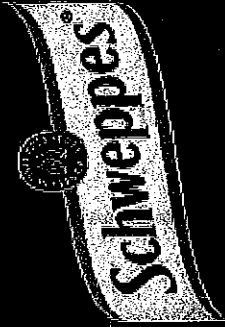
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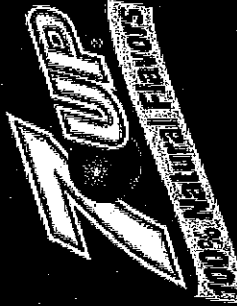
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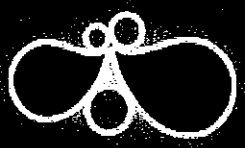


#1



#1

Source: AC Nielsen



“Core 4” Brands Are Well Regarded Across the U.S.

Brand Equity Index vs Norm

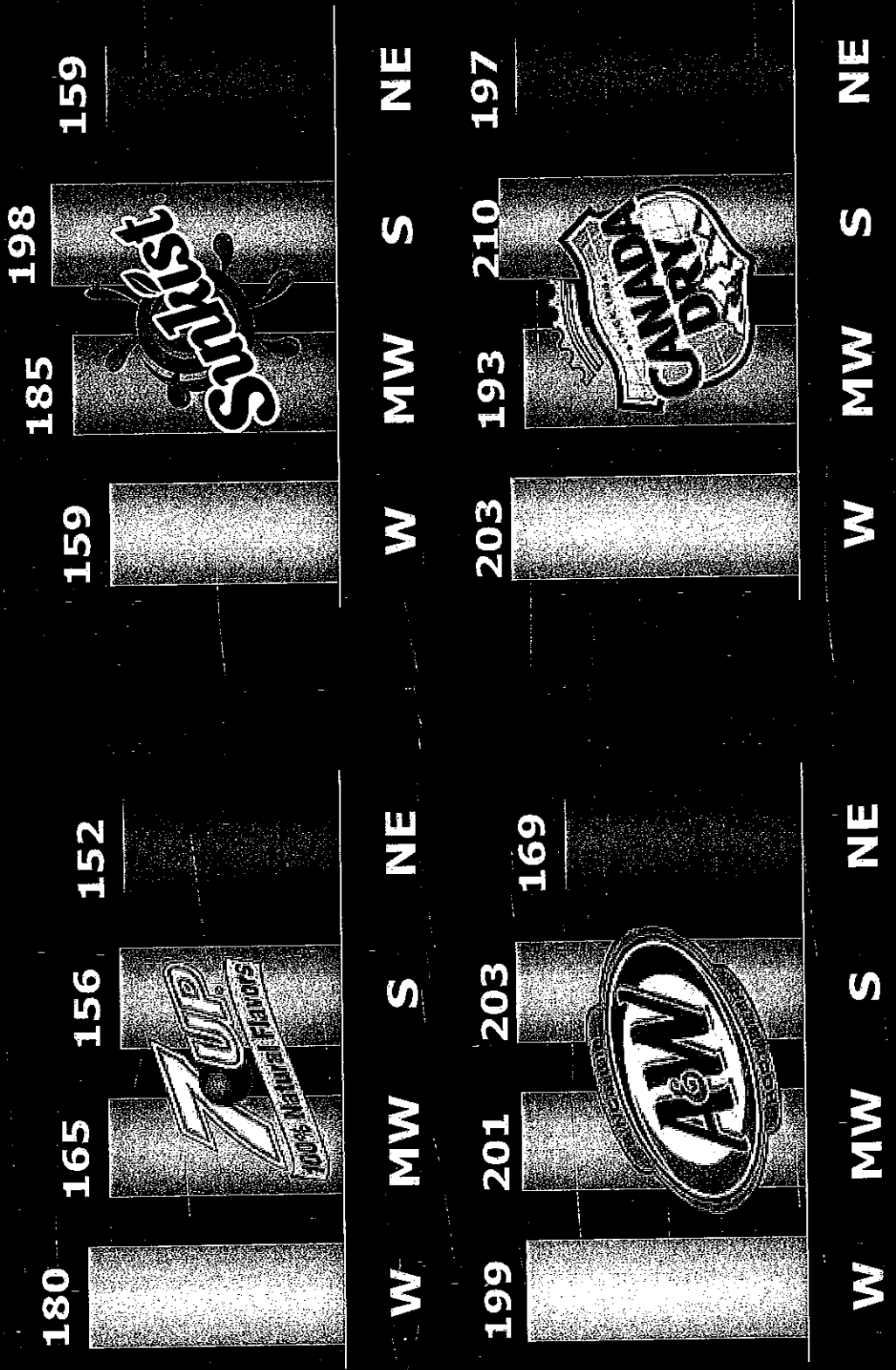


EXHIBIT DX009



The Pepsi Bottling Group and Dr Pepper Snapple Group Sign Agreement to Expand Crush Brand Distribution

Deal With DPS Aligns and Strengthens PBG's Flavor Portfolio

SOMERS, N.Y. & PLANO, Texas, Aug 21, 2008 (BUSINESS WIRE) -- The Pepsi Bottling Group, Inc. (NYSE: PBG) and Dr Pepper Snapple Group, Inc. (NYSE: DPS) today announced that the companies have signed an agreement to make the Crush beverage portfolio available in the majority of PBG's territories throughout the United States.

"At PBG, we continue to look for ways to strengthen and diversify our product portfolio. This agreement is an important part of our strategy to do so, as it aligns our flavored offerings across the U.S. and Canada," said PBG North America President Rob King. "The addition of Crush greatly enhances our position in the flavored soft drink category, as it's a terrific brand with broad consumer appeal and attractive growth prospects."

Jim Johnston, DPS President of Sales, said: "PBG already has a proven track record when it comes to building and enhancing Crush, having helped us grow the brand into one of the leading flavored soft drinks in Canada. With flavors playing an increasingly important role in the carbonated soft drink category, we're confident that together we can repeat that success in the U.S. and make Crush a popular national brand available to more consumers in more outlets. Simply put, it's a brand with tremendous untapped potential."

Under the terms of the agreement, PBG will have a perpetual license to manufacture, sell and distribute the brand, which includes such flavors as Orange Crush, Diet Orange Crush, and Grape Crush, in about 80 percent of its territories throughout the United States. The agreement is effective immediately and PBG will begin distribution in early 2009. Financial terms were not disclosed.

The Crush brand is currently available in less than 40 percent of the U.S. The agreement with PBG will nearly double its market penetration, positioning the brand well for future growth.

Flavored carbonated soft drinks now account for almost half of all carbonated soft drink (CSD) sales in the U.S., and Orange Crush and Diet Orange compete in the fourth largest segment of the flavor category. Orange and grape flavors represent a five percent share of the CSD market in the U.S.

Crush has been a fixture in the CSD space for decades, with tremendous name recognition among consumers. Market research shows that three out of four Americans are aware of the brand.

About PBG

The Pepsi Bottling Group, Inc. (NYSE: PBG) is the world's largest manufacturer, seller and distributor of Pepsi-Cola beverages. The company distributes a portfolio of products that includes some of the biggest brands in the beverage industry, including Pepsi, Diet Pepsi, Mountain Dew, Sierra Mist, Lipton Iced Tea, Aquafina, Sobe Life Water, Propel, G2 from Gatorade, Starbucks Frappuccino and AMP. Based in Somers, NY, PBG had annual sales of nearly \$14 billion in 2007 and has approximately 70,000 employees spread across the U.S., Canada, Greece, Mexico, Russia, Spain and Turkey. The company operates 100 manufacturing facilities and more than 500 distribution centers. In the U.S., PBG has the exclusive right to manufacture, sell and distribute Pepsi-Cola beverages in all or a portion of 41 states and the District of Columbia. For more information, please visit www.pbg.com.

About DPS

Dr Pepper Snapple Group, Inc., (NYSE: DPS) is an integrated refreshment beverage business marketing more than 50 beverage brands to consumers throughout North America. In addition to its flagship Dr Pepper and Snapple brands, the company's portfolio includes 7UP, Mott's, A&W, Sunkist Soda, Hawaiian Punch, Canada Dry, Schweppes, Squirt, RC Cola, Diet Rite, Penafiel, Rose's, Yoo-hoo, Clamato, Mr & Mrs T and other well-known consumer favorites. Based in Plano, Texas, Dr Pepper Snapple Group employs approximately 20,000 people and operates 24 bottling and manufacturing facilities and more than 200 distribution centers across the United States, Canada, Mexico and the Caribbean. For more information, please visit <http://www.drpeppersnapple.com>.

Forward-Looking Statement

Statements made in this press release that relate to future performance or financial results of either PBG or DPS are forward-looking statements which involve uncertainties that could cause their respective actual performance or results to materially differ. Neither PBG nor DPS undertakes any obligation to update any of these statements. Readers are cautioned not to place undue reliance on these forward-looking statements, which speak only as to the date hereof. Accordingly, any forward-looking statement, with respect to PBG, should be read in conjunction with the additional information about risks and uncertainties set forth in PBG's Securities and Exchange Commission reports, including PBG's annual report on Form 10-K for the year ended December 29, 2007, and with respect to DPS, should be read in conjunction with the additional information about risks and uncertainties set forth in DPS Securities and Exchange Commission Filings, including DPS' registration statement on Form 10 filed April 22, 2008.

SOURCE: The Pepsi Bottling Group, Inc.

Press:

The Pepsi Bottling Group, Inc.

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or

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greg.artkop@dpsg.com

or

Investor:

The Pepsi Bottling Group, Inc.

Mary Winn Settino, 914-767-7216

msettino@pepsi.com

or

Dr Pepper Snapple Group

Aly Noormohamed, 972-673-6050

aly.noormohamed@dpsg.com

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Choose your brand: 

ORANGE REFRESHMENT SINCE 1916

In 1916, Clayton J. Howell, president and founder of the Orange Crush Company, partnered with California chemist Neil C. Ward to incorporate the company. Ward, a beverage and extract chemist, perfected the process of blending ingredients to create the exclusive formula that yielded the zesty, all-natural orange flavor of Orange Crush. J.M. Thompson of Chicago is recognized as the original inventor of Orange Crush in 1906.

C. J. Howell was not new to the soft drink business, having earlier introduced Howell's Orange Julep. Soft drinks of the time often carried the surname of the inventor along with the product name. Howell sold the rights to use his name in conjunction with his first brand; his partner, Ward, was given the honors and Crush was first premiered as "Ward's Orange Crush."

Orange Crush was the first flavor produced by the company and others followed. Lemon Crush and Lime Crush were introduced in a line known as "the Crushes" within a few years of the brand's creation. Grape Crush was introduced in 1960, Cherry Crush in 1962 and Pineapple Crush in 1966.

In 1989, Cadbury Beverages acquired Crush USA from Procter & Gamble Co. Colorful new packaging graphics, introduced in 1991, and new Crush Tropical Punch and Crush Peach, introduced in 1992, extended the Crush flavor tradition in the '90s.

Today, Crush is part of Dr Pepper Snapple Group, Inc., an integrated beverage business marketing more than 50 beverage brands throughout North America.

What's in a name?

Clayton J. Howell included the word "crush" in the original soft drink's name to refer to the process of extracting oils from oranges.

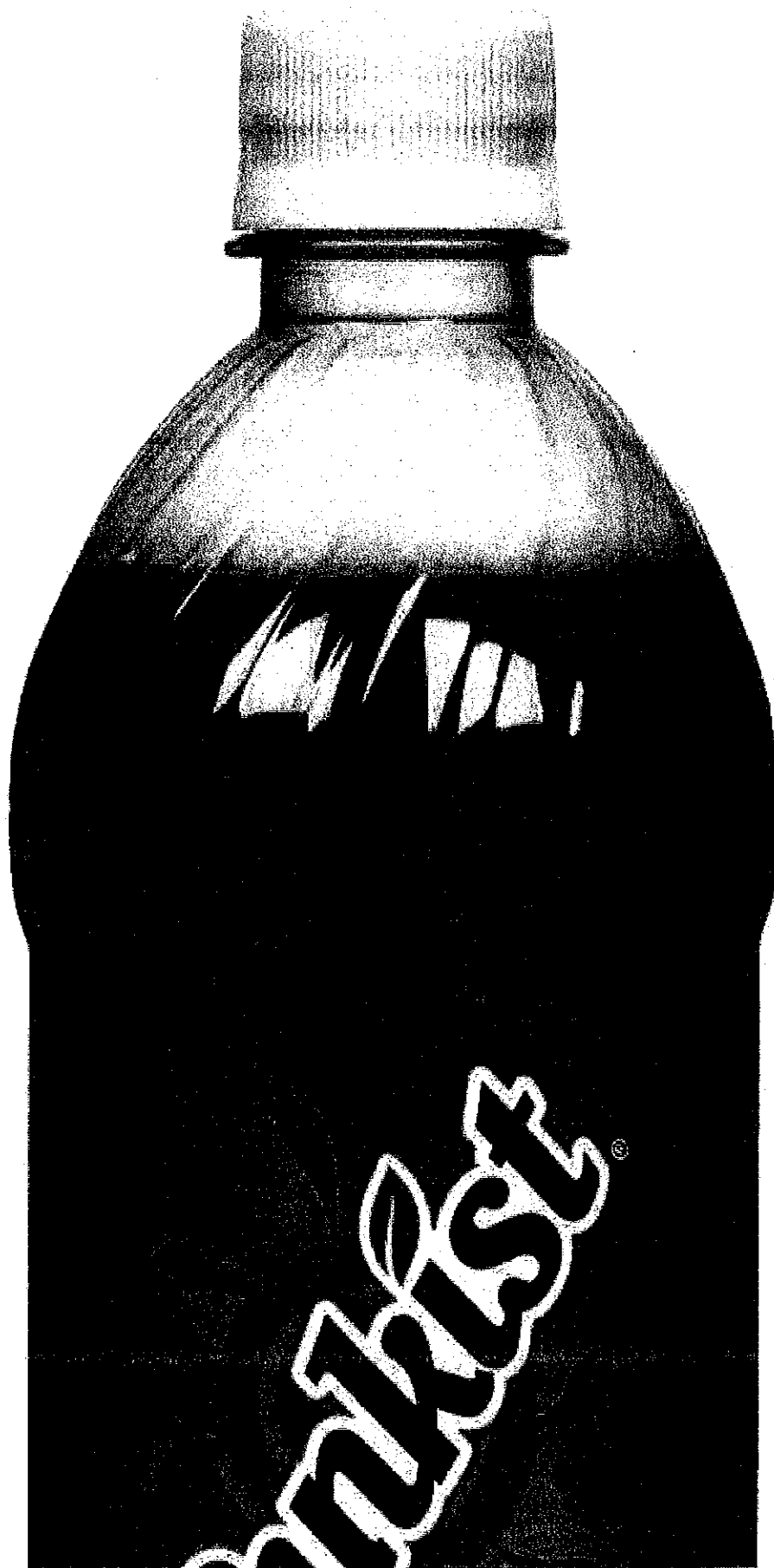
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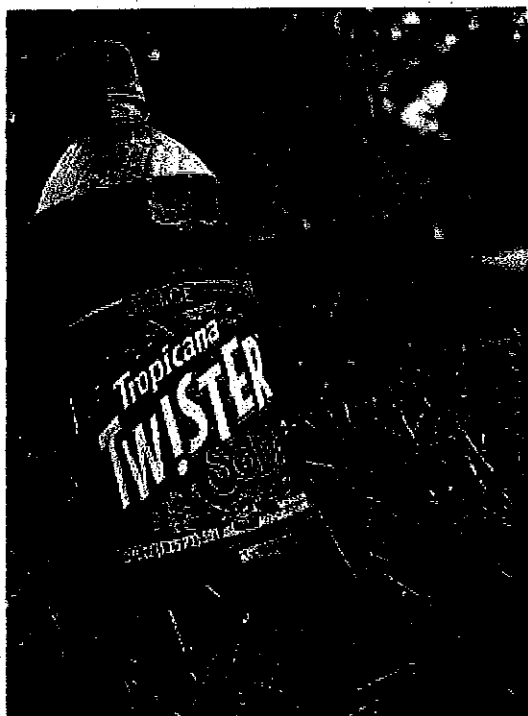
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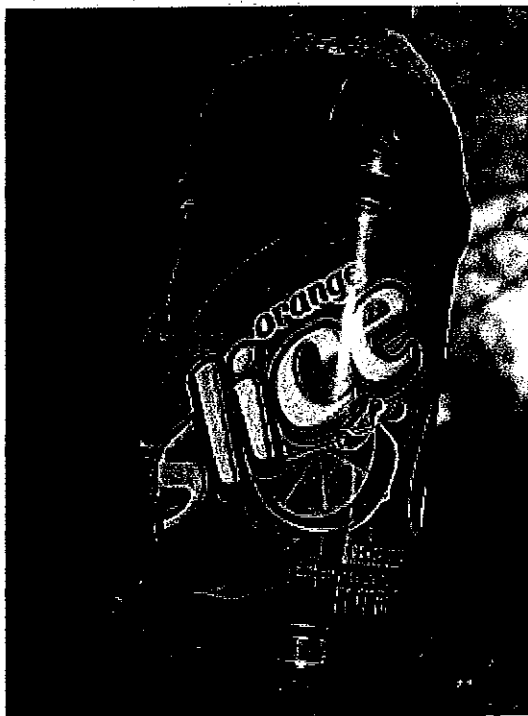
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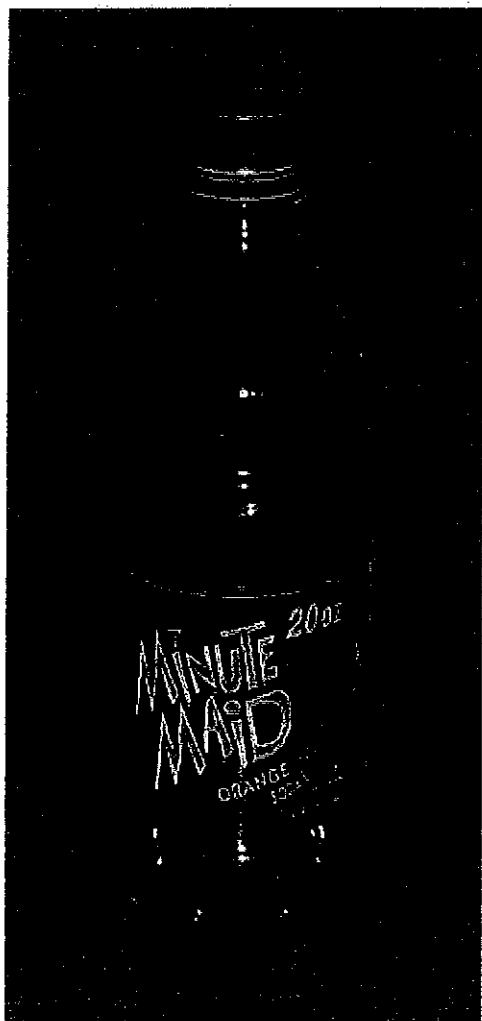


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WELCOME

CRUSH29

CRUSH29 is located at 1450 Truckee Road just over half a mile south of 1480 in Roseville. CRUSH29 incorporates more than 9000 sq ft of Napa Valley's unique design influence and transforms a wine country dining

HOME

ABOUT US

OUR CHIEF

MEALS

RESERVATIONS

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CHIEF DINNERS

GIFT CARDS

CONTACT US

Menu & accounts

WINERY CHILI
DINNER

music

EXHIBIT DX013

Int. Cl.: 43

Prior U.S. Cls.: 100 and 101

United States Patent and Trademark Office

Reg. No. 3,269,628

Registered July 24, 2007

**SERVICE MARK
PRINCIPAL REGISTER**

CRUSH 29

**CAPITOL CITY RESTAURANTS, INC. (CALI-
FORNIA CORPORATION)
1687 EUREKA ROAD, SUITE 200
ROSEVILLE, CA 95661**

**THE MARK CONSISTS OF STANDARD CHAR-
ACTERS WITHOUT CLAIM TO ANY PARTICULAR
FONT, STYLE, SIZE, OR COLOR.**

**FOR: RESTAURANT SERVICES, IN CLASS 43
(U.S. CLS. 100 AND 101).**

SN 78-652,034, FILED 6-16-2005.

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THEODORE MCBRIDE, EXAMINING ATTORNEY